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TOWN ATTORNEY REPORT

DATE: January 9, 2001
FROM: Monroe D. Kiar
RE: Litigation Update



1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services. The Administration advises that its negotiations as to the terms of an agreement with URS are ongoing and that there are still some terms to be worked out.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict for the Plaintiffs. The plaintiffs failed to file a timely Notice of Appeal and therefore, the jury verdict is now final. Mr. Burke has moved to tax court costs against the Plaintiffs. His motion remains pending.
3. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** The Town Attorney's Office has again been in contact with Mr. Burke, the attorney assigned to this case by the Florida League of Cities. As indicated in the last report, Judge Cocalis is being transferred from the Civil Division to the Family Law Division of the Broward Circuit Court. In an unrelated case, it was reported in the newspaper that she recently issued a lengthy opinion. Accordingly, it is believed that Judge Cocalis is attempting to rule on her civil litigation matters prior to her transfer to the Family Law Division. As such, it is believed that a decision from the Judge in these two cases should be forthcoming in the very near future.
4. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the

Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal and both sides have filed their Appellate Briefs. Mediation was ordered by the 11th Circuit Court of Appeals which was held on November 1, 2001, but a settlement of this dispute was not reached. Mr. Burke offered to waive the outstanding Cost Judgment if the Plaintiff Corporation would agree to withdraw its appeal. MVP Properties, Inc. rejected this proposal and it was unwilling to make a counter-proposal unless the Town of Davie expressed a willingness to pay the Plaintiff Corporation some amount of money. The mediation ended with an impasse. The Town Attorney's Office has recently been advised that oral argument before the United States Court of Appeals for the 11th Circuit is now scheduled for the morning of February 1, 2002, at the Federal Courthouse in Miami, Florida.

5. **Town of Davie v. Malka:** The Town Attorney's Office has been advised by the Building Department that the exterior of the home is complete. The exterior has been painted, all construction debris has been removed and the roof is complete. The completion of the exterior has been the principal goal of the Town Council, the Code Enforcement Division, the Town Attorney's Office and the Building Department, as well as the residents in the community. The owner will commence completion of the interior of the structure now that the exterior has been completed.
6. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The last rule promulgated by the Department of Agriculture was successfully challenged by Broward County and the coalition of cities before the Department of Administrative Hearings. The Department of Agriculture is appealing that ruling. In the meantime, the Department of Agriculture has promulgated a new rule and the coalition of cities, including Davie, has filed a rule challenge to this new rule. The trial on this challenge was initially scheduled to be heard in Pompano Beach in the latter part of January, 2002. The coalition commenced discovery procedures, but the Department has failed to properly produce all requested discovery and has filed a Motion seeking a Protective Order relieving it of its requirement to produce the Department's documents and discovery needed by the coalition. Accordingly, the trial has been rescheduled until April, 2002. The Department of Agriculture has filed another Motion to Disqualify the DOAH Judge again alleging bias. The first Motion to Disqualify was denied and it is anticipated that the second filed by the Department will also be denied.
7. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. The Town Attorney's Office has been in contact with the outside attorney assigned by the Florida League of Cities in this case, who has advised that he will now be filing a Motion to Dismiss the lawsuit for lack of prosecution, as the Plaintiff has failed to take any action in this matter for many months.
8. **Reinfeld v. Town of Davie, et al:** The parties have commenced discovery and the

deposition of the Plaintiff was recently taken. Based upon the contents of that deposition, Mr. Burke, the League of Cities Attorney assigned to this case, has indicated to the Town Attorney's Office that the Town will be moving for the entry of a Summary Judgment in its favor and against the Plaintiff, Reinfeld. In the meantime, Mr. Marrero, the Florida League of Cities Attorney assigned to represent Defendant Weiner, has indicated that it is his expectation that his office will be moving for Summary Judgment on behalf of Mr. Weiner as well in the near future and he has expressed confidence that his Motion will be granted by the Court. Mr. Weiner additionally filed his Answers to the various Interrogatories served upon him by the Plaintiff. A copy of Mr. Weiner's Answers were previously forwarded to the Council for its information.

9. **Spur Road Property:** The Town Attorney has been in contact with Mr. Burke regarding this matter. Mr. Burke appeared in Tallahassee before the Division of Administrative Hearings arguing the Town's protest of the Department of Transportation's award of the property to the highest bidder. There has been no ruling on the hearing on the Town's formal protest of the actions of the Department of Transportation as of the date of this Litigation Report. Mr. Burke has indicated that both sides have been requested to prepare proposed Findings of Fact and proposed Rulings for submission to the Court. The Town Attorney's Office contacted Mr. Burke this week relevant to the Spur Road property matter. He indicated that both sides were awaiting the decision of the Division of Administrative Hearings.
10. **Victoria Saldena v. Town of Davie:** The Town Attorney's Office has spoken with the League of Cities attorney assigned to represent the Town in this case, Mr. Bruce Johnson. Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson has assured the Town Attorney's Office that there should be no exposure to the Town which exceeds its insurance coverage and that the maximum exposure to the Town is its deductible.
11. **Cummings v. Town of Davie:** The Town Attorney's Office and the attorney for the Plaintiffs have jointly prepared a Final Judgment for submission to the Court which incorporates the terms of the Stipulation of Settlement which was previously approved by the Town Council and filed with the Court at the July 23, 2001 hearing. Also, the Town Attorney's Office has prepared an appropriate Deed to be executed by Mr. and Mrs. Cummings transferring title to the property in question to the Town of Davie. A certified copy of the approval of the variance request that was affirmatively voted upon by the Town Council has been provided to the Plaintiff's attorney and will also be attached to the Final Judgment as an exhibit along with a copy of the proposed Deed from Mr. and Mrs. Cummings to the Town of Davie. The Stipulated Final Judgment is currently being submitted to the Court for its approval and entry.